



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/379,704	08/24/1999	ROBERT P. BURKE	BOBBURK.003A	1615

7590 12/02/2002

KNOBBE MARTENS OLSON & BEAR LLP
620 NEWPORT CENTER DRIVE
16TH FLOOR
NEWPORT BEACH, CA 92660

EXAMINER

TRAN, KHOA H

ART UNIT	PAPER NUMBER
----------	--------------

3634

DATE MAILED: 12/02/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/379,704

Applicant(s)

BURKE, ROBERT P.

Examiner

Khoa Tran

Art Unit

3634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 September 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 41-50 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 41-50 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 August 1999 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Continued Prosecution Application

The request filed on September 30, 2002 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 09/379,704 is acceptable and a CPA has been established. An action on the CPA follows.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, "a first product supporting surface", "a first bottom surface", a first outside edge surface", "a first inside edge surface", "said first inside edge surface extending between said first product supporting surface and said first bottom surface", "a second product supporting surface", "a second bottom surface", a second outside edge surface", "a second inside edge surface", and "said second inside edge surface extending between said second product supporting surface and said second bottom surface" in claim 41, lines 5-14, and "an inner portion of said first bottom surface and an inner portion of said second bottom surface are lower than an outer portion of said first bottom surface and an outer portion of said second bottom surface", in claim 42, lines 1-3, must be shown or the features canceled from the claims. No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 41 and 45 are rejected under the judicially created doctrine of double patenting over claims 25, 35 and 38 of U. S. Patent No. 6,382,431. The U. S. Patent No. 6,382,431 claims a pusher block and a track in combination comprising a pair of generally T-shaped rails (74), each rail having a product supporting surface (72), a bottom surface, an outside edge surface, an inside edge surface, and an extended flange (78); the track further has a pusher block (112) having at least two sets of opposing flanges (122 and 128) that capture the outer edge surface and a bottom surface and the inside edge of a corresponding one of the rails.

Claims 41-50 are rejected under the judicially created doctrine of double patenting over the U. S. Patent No. D 445,615 in view of Hawkinson et al. ('869). The U. S. Patent No. D 445,615 illustrates all limitations of a pusher block as claimed but is silent on the track that the pusher block is slidable on. Hawkinson et al. ('869) teach a track having pair of generally T-shaped rails comprising a vertically extended rib

connected to a first product supporting surface that has an outside edge surface (22), and a lower inner and inside edge surface (20) that together define a generally T-shaped rail. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to provide the pusher block of the U. S. Patent No. D 445,615 with a track as taught by Hawkinson et al. ('869) because it is well within the level of skill in the art to utilize known features of the art for the purpose for which they are known and Hawkinson et al. ('869) establish that T-shaped tracks are known and conventional per se.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 41-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hawkinson et al. ('869) in view of Johnson et al. ('690). Hawkinson et al. ('869) disclose a pusher block and a track in combination comprising a pair of generally T-shaped rails, each rail has a first product surface (22), a bottom surface, an outside edge surface and an inside edge surface (20) that extend between the first product support surface and the bottom surface; the track further has a pusher block (18) having an outside flange adapted to wrap around the outside edge surface of the product support surface and engages a portion of the bottom surface, see Figure 4. Hawkinson

et al. ('869) do not teach the pusher block having a pair of lower extended arms /inside flanges. However, Johnson et al. ('690) teach the provision of a pair of lower extended arms/inside flanges (56a and 56b) on a pusher block (12). See Figure 3. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to provide the pusher block of Hawkinson et al. ('869) with a pair of lower extended arms/inside flanges as taught by Johnson et al. ('690) in order to enable securing the pusher block under the inside edge surface and preventing the pusher block from separating from the track.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoa Tran whose telephone number is (703) 306-3437. The examiner can normally be reached on Monday through Thursday from 8:30 A.M. to 7:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola, can be reached on (703) 308-2686. The fax phone number for this Group is (703) 305-3597 or (703) 305-3598.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-2168.

If the applicant is submitted by facsimile transmission, applicant is hereby reminded that the original should be retained as evidence of authenticity (37 CFR 1.4 and M.P.E.P. 502.02). In general, most responses and/or amendments not requiring a fee, as well as those requiring a fee but charging such fee to a deposit account, can be

Art Unit: 3634

submitted by facsimile transmission. Responses requiring a fee which applicant is paying by check **should not be** submitting by facsimile transmission separately from the check. Responses submitted by facsimile transmission should include a Certificate of Transmission (M.P.E.P 512). The following is an example of the format the certification might take:

I hereby certify that this correspondence is being facsimile transmitted to the
Patent and Trademark Office

Fax No. _____ On _____

(Date)

Type or printed name of person signing this certificate:

(Signature)

Furthermore, please do not separately mail the original or another copy unless required by the Patent and Trademark Office. Submission of the original response or a follow-up copy of the response after your response has been transmitted by facsimile will only cause further unnecessary delays in the processing of your application; duplicate responses where fees are charged to a deposit account may result in those fees being charged twice.

Khoa Tran
November 23, 2002



DANIEL P. STODOLA
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600